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5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 BROCK MASLONKA,

Plaintiff,

8 vs.

9 FAIRCHILD AIR FORCE BASE; and
JEREMY J. MALDONADO, Lt. Col.,

10 Defendants.

No.

**NOTICE OF REMOVAL
OF STATE LAWSUIT TO THE
U.S. DISTRICT COURT (EDWA)**

11 PLEASE TAKE NOTICE that the above named Defendants, the “Fairchild Air
12 Force Base” (*FAFB*) a Military Base within the U.S. Department of the Air Force
13 (*USAF* - an Agency of the United States government), and the Lt. Colonel “Jeremy J.
14 Maldonado,” an Officer within the *USAF*, Judge Advocate General’s (JAG) Office,
15 through their statutory counsel, *Vanessa R. Waldref*, United States Attorney for the
16 Eastern District of Washington (EDWA), and more specifically the undersigned
17 Assistant United States Attorney, and hereby give Notice pursuant to 28 U.S.C. §
18 1446(a) of the Removal of this civil action to the U.S. District Court (EDWA). This
19 civil action is appropriate for removal under 28 U.S.C. § 1442(a)(1) and/or § 1442a
20 since the case involves allegations against the United States *or any agency thereof*
21

1 (i.e., USAF's Fairchild Air Force Base (FAFB)) and against an *officer* of the United
2 States armed forces. *Id.*

3 In this case, the Plaintiff *pro se* asserts a tort claim against the presently federal
4 and improperly named Defendants and has also improperly pursued his asserted tort
5 claim in State Court (i.e., Pend Oreille County District Court, Small Claims
6 Department), asserting a claim for property (fence) damages in the amount of
7 \$10,000. Wherefore, Plaintiff's Small Claims Department Complaint is appropriate
8 for removal due to his claim being asserted against an Agency of the United States
9 (i.e., a USAF military base in Spokane, WA) and a federal officer – member of the
10 United States armed forces (U.S. Department of Defense (DOD), USAF, JAG Corp)
11 for acts allegedly taken within the scope of Lt. Colonel Maldonado's employment. *See*
12 attached ***Exhibits 201*** (*Small Claims Court Docket and Pleadings (including*
13 *Complaint)* and ***Exhibit 202*** (*Lt. Col. Jeremy J. Maldonado's FTCA Administrative*
14 *Tort Claim Declination Letter, dated July 19, 2004*

15 Therefore, suitable grounds supporting removal of this action include, but are
16 not necessarily limited to:

17 1. Defendant Fairchild Air Force Base (FAFB) is an armed forces
18 installation of the United States Air Force (USAF), and a sub-agency of the U.S.
19 Department of Defense (DOD). FAFB and Lt. Col. Jeremy J. Maldonado are the
20 named Defendants in the above-captioned civil action, which Plaintiff elected to file
21 in the District Court of Pend Oreille County – Small Claims Department, of the State

1 of Washington, Case Number SC2511. A copy of the Pend Oreille County District
2 Court docket for case number SC2511, as well as copies of all process and pleadings
3 that have been served on defendants, is attached as *Exhibit 201*.

4 2. Defendant Lt. Col. Jeremy J. Maldonado is an officer for the United
5 States Air Force (USAF) (i.e., armed services member), assigned to the USAF's JAG
6 Corp. *See Exhibit 202*. He is being sued by Plaintiff for acts Lt. Col. Maldonado took
7 while acting within the scope and color of his office - i.e., the issuance of a Federal
8 Tort Claims Act (FTCA) claim declination letter, issued by Lt. Col. Maldonado, a
9 member of the USAF's JAG Corp., to Plaintiff on or about July 19, 2024). *See e.g.,*
10 *FTCA Certification of Federal Employment* by AUSA – Civil Chief Brian Donovan,
11 filed herewith. Plaintiff had previously filed a FTCA tort claim with the USAF,
12 seeking recovery of property damage (i.e., a fence) allegedly caused by a presently
13 unnamed Airman First Class's alleged negligent operation of a motor vehicle while
14 the Airman was off-duty and off-base (i.e., acting outside the scope of the Airman's
15 employment). *See* Plaintiff's Small Claims Complaint (Ex. 201) and FTCA Claim
16 Declination Letter of July 19, 2024 (Ex. 202).

17 3. The USAF was reportedly provided a copy of the Plaintiff's Complaint
18 shortly after its filing on Friday, August 2, 2024, and its delivery thereafter to the
19 USAF. Therefore, 30 days have not expired since the USAF's date of receipt of the
20 summons and complaint, and removal is therefore timely under 28 U.S.C. § 1446(b).

1 4. A federal officer, or a person acting under the direction of a federal
2 officer, is also entitled to removal under 28 U.S.C. § 1442(a)(1) - *whenever* a civil
3 action or criminal prosecution is commenced against him/her “for or relating to any
4 act under color of such office[.]” The “color of office” standard is satisfied where
5 there is a “causal connection” between the alleged conduct and the asserted official’s
6 authority. *Willingham v. Morgan*, 395 U.S. 402, 409 (1969). Here, there is a causal
7 connection between the alleged conduct, i.e., allegations of negligently operating a
8 federal law enforcement motor vehicle, the filing of a FTCA claim, and federal officer
9 / armed forces member, Lt. Col. Maldonado’s official act in denying Plaintiff’s FTCA
10 claim. In short, Lt. Col. Maldonado was acting in his official position as a Judge
11 Advocate General (JAG) Corp attorney at the time of his issuance of the FTCA
12 administrative claim declination letter. *Ex. 202*. Therefore, removal is also timely and
13 authorized under 1442a (removal may occur any time before trial / final hearing).

14 WHEREFORE, defendants request that this action be removed from
15 Washington State’s Pend Oreille County District Court – Small Claims Department,
16 to the U.S. District Court for the Eastern District of Washington (EDWA), and that it
17 be placed on the District Court’s docket, and upon the filing of this Notice of Removal
18 with the Clerk of the District Court of Pend Oreille County (Small Claims) and
19 service of this Notice upon the parties, the District Court for Pend Oreille County
20 (WA) – Small Claims Department, will abide with federal law and proceed no further
21 in this action. *See* 28 U.S.C. § 1442(a)(1); *Willingham, id.*

1 RESPECTFULLY SUBMITTED on August 29, 2024.

2 Vanessa R. Waldref
3 United States Attorney

4 /s/ Tim M. Durkin
5 Timothy M. Durkin
6 Assistant United States Attorney
7 Attorneys for Defendant United States

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9
10
11 **Certificate of ECF / Other Service**

12 I hereby certify that I electronically filed the foregoing with the Clerk of the
13 Court, using the CM/ECF system, on the date electronically stamped. I also certify
14 that I have arranged to have mailed a copy of the foregoing, by United States Postal
15 Service, to the following non-CMF/ECF participants:

16 Mr. Brock Maslonka
17 417372 SR 20
18 Cusick, WA 99119

19 s/Tim M. Durkin
20 Timothy M. Durkin
21 Assistant United States Attorney